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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,544	11/07/2003	Tom I. Lincir	5004.3	8247

7590 09/22/2005

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,544

Applicant(s)

LINCIR, TOM I.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 1-5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Declaration filed on November 7, 2003, presumably under 37 CFR 1.131 in response to the art applied in the parent application 09/687,354, has been considered but is ineffective to overcome the *Rojas et al.* US Pat. D433,469) and *Savage* (US Pat. D432,602) references. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the *Rojas et al.* '469 or *Savage* '602 references. The declaration does not clearly explain facts or data applicant is relying on to show completion of his invention prior to a particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). MPEP 715.07.

2. The Declaration, presumably under 37 CFR 1.132, filed November 7, 2003 is insufficient to overcome the rejection of claims rejected based upon the Olympic plates disclosed by *Bodybuilder's Discount Outlet* as set forth in the last Office action of parent application 09/687,354 because: the photograph of the cross section of an Olympic plate, Exhibit A, is not the same Olympic weight plate disclosed by *Bodybuilder's Discount Outlet*. It is known in the exercise art that not all Olympic weight plates are the same. The term "Olympic" weight plate in the exercise art means that the central aperture is sized to fit Olympic or international bars having a nominal weight sleeve diameter of 2 inches. So the aperture in an Olympic weight plate is

nominally 2 inches in diameter. Weight plates having a central aperture of 1 inch are known in the exercise art as standard weight plates.

The Olympic weight plates disclosed by *Bodybuilder's Discount Outlet* (35, 45 and 100 lbs) have a plurality of ribs that taper from the central aperture hub portion to the peripheral portions of the weight plate, such that the peripheral portion of the weight plate adjacent the raised rim running around the outer edge is thinner than the central portion. This is shown in the illustrations and further disclosed in the description of the Olympic plates. "Larger plates are reinforced with extra ribs for strength and durability."

Specification

3. The disclosure is objected to because of the following informalities: the status of the related application identified on page 1 of the specification should be updated.

Appropriate correction is required.

Claim Objections

4. Claims 1-5 are objected to because of the following informalities:

claim 1, line 1, "has" presumably should be changed to --have--;

claim 1, line 7, "A" presumably should be changed to --a--;

claims 2-4, line 1 of each claim, "The device" presumably should be changed to --The barbell plate--, --The circular barbell plate--, or --The plate--, since "The device" lacks proper antecedent basis;

claim 3, line 1, --plate-- presumably should be inserted after "barbell"; and

claim 5, lines 3, 4 and 10, "Forming" presumably should be changed to --forming--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 5-7 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for providing a barbell plate having a central aperture, at least one peripheral aperture, a tapered portion and a raised rim, the specification does not reasonably provide enablement for forming the barbell plate from a circular plate member. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The body of the specification discloses a barbell plate having a round aperture in the central portion of the plate, but does not disclose how to form a round aperture in the central portion of a circular plate member. The body of the specification discloses at least one aperture formed in the peripheral portion of the plate member, but does not disclose how at least one aperture is formed in the peripheral portion of a circular plate member. The body of the specification discloses that there is a tapered portion between the central portion and peripheral portions of the weight plate, but not how a tapered portion is formed on the plate member between the central and peripheral portions thereof. The body of the specification discloses that the weight plate has

a raised rim around the outer edge of the peripheral portion of the weight plate, but not how the raised rim is formed from the circular plate.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 2 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by *Lincir* (US Pat. D445,153 S). *Lincir* '153 discloses a circular barbell plate having a single aperture formed in the central portion, a plurality of round apertures formed in the peripheral portion, a tapered portion running between the central portion and the peripheral portion, the tapered portion tapering inwardly towards the peripheral portion so that the peripheral portion has a substantially lesser thickness than the central portion; and a raised rim running around the outer edge of the peripheral portion. *Lincir* '153 is considered proper prior art since the subject matter of claim 2 is newly presented in this CIP application and is afforded a effective filing date the same as the filing date of this CIP application. Any combination of subject matter with the subject matter of claim 2 is afforded the same effective filing date.

9. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by *Rojas et al.* (US Pat. D433,720). *Rojas et al.* '720 discloses a circular barbell plate having a central portion and a peripheral portion with an outer edge. A single aperture is formed in the central portion. A plurality of elongated apertures are formed in the peripheral portion. A tapered portion runs between the central portion and the peripheral portion. The tapered portion tapers inwardly towards the peripheral portion so that the peripheral portion has a substantially lesser thickness than the central portion. A raised rim runs around the outer edge of the peripheral portion. The method claims (5 and 6), as best understood, are anticipated by *Rojas et al.* '720, since the barbell plate discloses each of the claimed features formed thereon.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bodybuilder's Discount Outlet* (Olympic plates, pg. 29 of Summer 1995 catalog) in view of *Iron Grip* (brochure from 4/1997). *Bodybuilder's Discount Outlet* (hereafter "BDO") discloses a circular barbell weight plate having a central portion and a peripheral portion with an outer edge. A single aperture is formed in the central portion. A tapered portion runs between the central portion and the peripheral portion. The tapered portion is a rib on the larger plates (35, 45 and 100 lbs) that reinforce the plates for strength and durability. The tapered portion tapers inwardly

towards the peripheral portion so that the peripheral portion has a substantially lesser thickness than the central portion. A raised rim runs around the outer edge of the peripheral portion.

BDO does not disclose the barbell plates having at least one aperture formed in the peripheral portion (claims 1 and 5); a rubberized coating (claims 3 and 7); and a plurality of elongated apertures formed in the peripheral portion (claims 4 and 6).

Iron Grip discloses a barbell plate comprising a plurality of elongated apertures formed in a peripheral portion that provide a safe, user-friendly means for lifting and carrying. The barbell plate is covered with a urethane coating (a rubberized coating) to protect the barbell plate surface and surfaces that come into contact with the barbell plate from damage. The barbell plates include a central aperture, a raised central portion, and a raised rim running around the outer edge of the peripheral portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Olympic weight plate of *BDO* with the handgrips and urethane coating of *Iron Grip*, in order to provide a safe, user-friendly means for lifting and carrying the weight plate and to protect the weight plate surface and surfaces that come into contact with the weight plate from damage.

The method claims (claims 5-7), as best understood, are unpatentable over *BDO* in view of *Iron Grip*, since each of the claimed features is formed thereon.

12. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bodybuilder's Discount Outlet* (Olympic plates, pg. 29 of Summer 1995 catalog) in view of *Rojas et al.* (US Pat, D442,240). *BDO* has been discussed above, and such discussion is

incorporated herein. *BDO* discloses the invention as claimed except for at least one aperture formed in the peripheral portion (claims 1 and 5); and a plurality of round apertures formed in the peripheral portion (claim 2).

Rojas et al. '240 discloses a weight plate comprising a plurality of round apertures formed in the peripheral portion of the weight plate. The apertures are grip openings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Olympic weight plates of *BDO* with the grip openings of *Rojas et al.*, so that a user may more conveniently lift the barbell weight plate by using the grip openings.

13. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the preamble of claim 1 in view of *Bodybuilder's Discount Outlet* (Olympic plates, pg. 29 of Summer 1995 catalog). Claim 1 is presented in the format of a *Jepson* claim. Drafting a claim in *Jepson* format is taken as an implied admission that the subject matter of the preamble is the prior work of another. *In re Fout*, 675 F.2d297, 301, 213 USPQ 532, 534 (CCPA 1982). MPEP 2129. The preamble of claim 1 recites as implied prior art a circular barbell having a central portion and a peripheral portion having an outer edge. A single aperture formed in the central portion. At least one aperture formed in the peripheral portion.

The preamble does not disclose the barbell plate having a tapered portion running between the central portion and the peripheral portion, the tapered portion tapering inwardly towards the peripheral portion so that the peripheral portion has a substantially lesser thickness

than the central portion; and a raised rim running around the outer edge of the peripheral portion.

Savage discloses the ornamental design for a weight plate comprising a tapered portion running between the central portion and the peripheral portion, the tapered portion tapering inwardly towards the peripheral portion so that the peripheral portion has a substantially lesser thickness than the central portion; and a raised rim running around the outer edge of the peripheral portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barbell plate of the preamble of claim 1 with the tapered portion and raised rim formed thereon, since *Savage* discloses such features are known in the ornamental design of a weight plate and such inclusion would be a design consideration.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Speyer (US Pat. 3,771,785) discloses a weight plate 10 comprising a tapered portion (hashed area as seen in Figs. 2 and 5) running between central and peripheral portions, the tapered portion tapering inwardly towards the peripheral portion so that the peripheral portion has a substantially lesser thickness than the central portion; and a raised rim running around the outer edge of the peripheral portion.

Becker (DE 40 09 346 A1) discloses a weight plate covered with a rubberized coating.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
September 19, 2005



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332